



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 5, 1998

Mr. Mark J. Levine
Feldman & Rogers, L.L.P
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR98-1855

Dear Mr. Levine:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117248.

The Housing Authority for the City of Houston (the "housing authority"), which you represent, received a request for information concerning the housing authority's use of outside counsel and charges for legal services. You inform us that you have no invoices for work performed by the firm of Brown McCarroll & Oaks Hartline. You assert that the Feldman & Rogers invoices are excepted from disclosure pursuant to sections 552.103(a) and 552.107(1) of the Government Code. We have considered your arguments and reviewed the representative sample of documents submitted.¹

To show that section 552.103(a) is applicable, a governmental body must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.c.); Open Records Decision No. 551 (1990) at 4. You supplied this office with copies of the pleadings from two lawsuits and complaints of discrimination, retaliation, and harassment filed with the Texas Commission on Human Rights (the "TCHR") or the Equal Employment Opportunity Commission ("EEOC"). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The Equal EEOC defers jurisdiction to the TCHR over complaints alleging employment

¹ In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

discrimination. *Id.* This office has stated that a pending EEOC complaint indicates litigation is reasonably anticipated. Open Records Decision Nos. 386 (1983) at 2, 336 (1982) at 1.

We have considered your arguments and conclude that you have shown that litigation is pending or reasonably anticipated in most cases. You have not shown that litigation is reasonably anticipated as to the information in Tab T for which you indicate that a grievance hearing is pending. We have reviewed the submitted information and agree that in those instances in which litigation is pending or reasonably anticipated, the descriptions of legal services are related to the subject of such litigation. However, you have not shown how the hours and fee amounts are related to the litigation. Thus, you may withhold the descriptions of legal services in Tabs O, Q, and S under section 552.103.² We have marked the information in Tab T that you may withhold under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Next, we will consider your assertion that section 552.107 excepts the information which you have marked in Tab T. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have marked the information that you may withhold under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

² We need not address your section 552.107 claim as to the information that you may withhold under section 552.103.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" being clearly distinguishable.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 117248

Enclosures: Marked documents

cc: Mr. William Queenan
3405 Oakdale
Houston, Texas 77004-7809
(w/o enclosures)